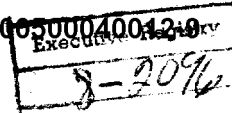


CONFIDENTIAL

24 April 1956

MEMORANDUM FOR THE RECORD**SUBJECT: Congressional Committee Subpoenas to Heads of Executive Departments**

1. The precedent for refusing information to Congress was set by Washington in 1792 when the House, basing its right to investigate on its control of expenditures, asked the President for papers pertaining to the General St. Clair campaign. Washington and his cabinet came to the unanimous conclusion:

"First, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public: consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the Head of a Department who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President." (Emphasis supplied)

Washington followed his own precedent in 1796 when presented with a resolution of the House of Representatives requesting a copy of his instructions to the Minister of the United States who negotiated the Treaty with the King of Great Britain, together with the correspondence and documents relative to that Treaty. In closing his message refusing compliance with the House's request he stated:

"As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; ... and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, as a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request."

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2. Washington's precedent has been followed on numerous occasions since. The Congress and various of its Committees have frequently seen fit to request or demand papers or testimony from the President or from Heads of Executive Departments. No Department Head has complied with such a request when the President deemed a reply undesirable and the request an invasion of the Executive's prerogatives. Actually, few of the precedents are in cases of demand for personal appearances alone, but most involve demands on the part of congressional committees to see records. The principle, however, involves information in any form, not just records. Following are pertinent recent cases.

- a. The Director of the Federal Bureau of Investigation refused to give testimony or to exhibit a copy of the President's directive requiring him, in the interest of national security, to refrain from testifying or from disclosing the contents of the Bureau's reports and activities.
- b. The Director of the Bureau of the Budget refused to testify and to produce the Bureau's files, pursuant to subpoena which had been served upon him, because the President had instructed him not to make public the records of the Bureau due to their confidential nature. Public interest was again invoked to prevent disclosure.
- c. The Secretaries of War and Navy were directed not to deliver documents which the committee had requested, on grounds of public interest. The Secretaries, in their own judgment, refused permission to Army and Navy officers to appear and testify because they felt that it would be contrary to the public interests.
- d. In March 1948 Dr. John R. Steelman, Confidential Adviser to the President, refused to appear before the Committee on Education and Labor of the House, following the service of two subpoenas upon him. The President directed him not to appear.

3. Most of the above material was presented to the President in May 1954 in a memorandum on separation of powers by Attorney General Brownell. Mr. Brownell closed his memorandum to the President with the following:

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MEMORANDUM FOR: THE DIRECTOR

Attached is a historical note on refusal of the Executive Branch to respond to Congressional subpoenas or requests for information. In short, if the head of an agency refuses to respond to a Congressional Committee based upon Presidential instructions or Presidential backing, the Executive Branch has been successful in resisting the Congressional requests. In many other cases compromises are achieved in agreeing on the limits of the information to be furnished. I shall be glad to discuss this in connection with the [] at any time.

S/
LAWRENCE R. HOUSTON
General Counsel

24 April 1956

(DATE)

cc: Leg Counsel

FORM NO. 101 REPLACES FORM 10-101
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